

REMARKS

Claim 4 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claims 1, 3-7, 13-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kennedy (Kennedy), U.S. Patent Number 5,659,748 in view of Itkowsky et al. (Itkowsky), U.S. Patent Number 5,875,309 and Alexander et al. (Alexander), U.S. Patent Number 6,467,006.

Claim 4 has been amended. Reconsideration of this application is respectfully requested.

Claim Rejections -35 USC § 112

The Examiner rejected Claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because "Claim 4 recites the limitations 'the system bus' in line 2; there is insufficient antecedent basis for this limitation in the claim". Claim 4 has been amended to overcome such rejection.

Claim Rejections -35 USC § 103(a)

The Examiner rejected Claims 1,3-7,13-18 and 20-22 under 35 U.S.C. 103(a) as being unpatentable over Kennedy (Kennedy '748), US patent no. 5,659,748 in view of Itkowsky et al. (Itkowsky '309), US patent no. 5,875,309 and Alexander et al. (Alexander '006), US patent no. 6,467,006. However, Kennedy ' 748, Itkowsky '309 and Alexander '006 fail to suggest, disclose or teach, either alone or in combination, all limitations for each rejected claim. Accordingly, the

Office Action has failed to make a prima facie case of obviousness, and such rejections should be withdrawn.

Claim 1. Regarding Claim 1, The Office Action admits, at page 3, that “Kennedy fails to teach of [sic] (1) determining a bootstrap processor from a plurality of operable processors and (2) asserting a first signal and (3) a second signal.” Office Action, page 3 (numerals added). The Office Action’s argument that a prima facie case of obviousness is nonetheless made out must fail.

The Office Action argues that the first and second elements listed above are taught by Itkowsky ‘309. The Office Action further argues that Alexander ‘006 teaches the third element listed above. It is the Examiner’s assertion that it would have obvious to one of skill in the art to combine the teachings of Kennedy ‘748, Itkowsky ‘309 and Alexander ‘006 because they teach election processing in the system, and because limitations of Itkowsky ‘309 and Alexander ‘006 “would improve reliability of Kennedy system by only selecting a BSP from a plurality of operable processors.” Office Action, page 3. However, the Office Action fails to make a prima facie case of obviousness because there is absolutely no teaching, suggestion, nor motivation in the cited art to combine the teachings of Kennedy ‘748 with Itkowsky ‘309 and Alexander ‘006.

The legal requirements for a prima facie case of obviousness are clear. “The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness.” MPEP § 2142. The cited references must teach or suggest all the claim limitations in order for a prima facie case of obviousness to lie. MPEP § 2142. The mere fact that a reference can be modified does not render the resultant combination obvious unless the prior art also **suggests** the desirability of the combination. Furthermore, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). Instead, there must be some

objective reason to modify the teaching of the reference. See MPEP § 2143.01 (argument that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness).

Applicants disclose and claim, in Claim 1, determining a bootstrap processor in a multiprocessor system (in part). In contrast, both Itkowsky and Alexander disclose arbitration mechanisms for networks. The Office Action has made no objective showing that one of skill in the art would have been motivated to combine the cited references.

The Office Action states at Page 3 that Itkowsky '309 teaches determining a master active arbiter. Applicants do not disagree with this assertion. However, teaching a "master active arbiter" does in any way suggest, teach, or disclose "determining a boot strap processor from a plurality of operable processors." (Claim 1, in part). Applicants' bootstrap processor coordinates testing of the rest of the MPS 200 and load the operating system. Application, page 8, para. 19; Application, page 14, para. 38. The bootstrap processor runs boot procedures. Application, page 8, para. 20. In contrast, the master active arbiter disclosed at Col. 6 of Itkowsky '309 arbitrates communication on a backplane bus among all modules of a network. It performs table-based arbitration during operation of the network. In contrast, after the operating system has been loaded and components of the system have been initialized, Applicants disclose that the bootstrap processor sends a startup interprocessor interrupt to commence normal symmetric operations in the multiprocessor system. Application, page 15, para. 40; Fig. 3 (block 315).

Accordingly, neither Kennedy nor Itkowsky nor Alexander, alone nor in combination, teach, disclose, or suggest "determining a bootstrap processor from a plurality of operable processor" nor do they disclose, teach or suggest "ensuring that both the first signal and the second signal are asserted prior to allowing the plurality of operable processors to enter a bootstrap processor arbitration process." (Claim 1, in part).

The Office Action's assertion that one of skill in the art would be motivated to combine these references to "improve reliability" is far-fetched. Even if Applicants were to agree that improved reliability is a goal known in the art (which they do not herein address), the Office Action nonetheless fails to make a prima facie case that the *particular limitations* recited in Claims 1, 13 and 18 would have been reached in furtherance of such goal. There is simply no suggestion in the cited art to do so.

The Office Action has failed to provide any suggestion or teaching within the references for such combination. Even if the teachings of the cited references were combined, they would still fail to make a prima facie of obviousness because they do not individually teach all of the limitations of Claim 1. Accordingly, the Office Action has failed, at least, to make a prima facie case of obviousness regarding claim 1. Claim 1 is allowable for at least this reason. In addition, 3-7, which depend from Claim 1, are also allowable for at least this reason.

Claim 13. Regarding Claim 13, the Office Action cryptically claims that "Kennedy and Itkowsky and Alexander together teach the claimed method of steps. Therefore, Kennedy and Itkowsky and Alexander together teach the claimed system to carry out the method of steps." Applicants find this statement cryptic. Applicants assume, for purposes of fashioning a response, that the Office Action is asserting that because the Office Action has made a prima facie case of obviousness regarding a method (this assertion is vigorously disputed by Applications in the foregoing paragraphs regarding Claim 1), it has also automatically made a prima facie case of obviousness regarding the computing system claimed in Claim 13.

By failing to address each and every limitation of Claim 13, the Office Action has failed to properly state a prima facie case of obviousness regarding such claim. MPEP § 2143 ("[T]he prior art reference (or references when combined) must teach or suggest all the claim limitations"). The Office Action has wholly failed to make a prima facie case of obviousness at least with respect to the following elements of claim 13: a plurality of operable processors, a

system bus, an arbitration protocol, and logic to ensure that both a first signal and a second signal are asserted prior to allowing the plurality of operable processors to enter a bootstrap processor arbitration process. Claim 13 is allowable for at least this reason. Claims 14-17, which depend from Claim 13, are also allowable for at least this reason.

Claim 18. Regarding Claim 18, the Office Action again bypasses the requirements for a prima facie case of obviousness. Because not prima facie case has been made out regarding Claim 18, Claim 18 stands in condition for allowance, as do all claims (20-22) that depend from Claim 18. Specifically, the Office Action again claims that "Kennedy and Itkowsky and Alexander together teach the claimed method of steps of claim 1. Therefore, Kennedy and Itkowsky and Alexander together teach the claimed computer readable media to carry out the method of steps. " Again, Applicants assume, for purposes of fashioning a response, that the Office Action is asserting that because the Office Action has made a prima facie case of obviousness regarding a method (this assertion is vigorously disputed by Applications in the foregoing paragraphs regarding Claim 1, it has also automatically made a prima facie case of obviousness regarding the computing system claimed in Claim 18.

By failing to address each and every limitation of Claim 18, the Office Action has failed to properly state a prima facie case of obviousness regarding such claim. MPEP § 2143. The Office Action has wholly failed to make a prima facie case of obviousness at least with respect to the following elements of claim 18: a computer readable media, and instructions embedded on the computer readable media. Claim 18 is allowable for at least this reason. Claims 20-22, which depend from Claim 18, are also allowable for at least this reason.

For the foregoing reasons, Applicants respectfully submit that the applicable rejections have been overcome and must all be withdrawn. All claims are therefore in condition for allowance. Applicants reserve all rights with respect to the application of the doctrine equivalents. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

An Information Disclosure Statement is also submitted with this amendment . Please charge any shortages and credit any overcharges to our Deposit Account No. 02-2666.

Respectfully submitted,

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Gregory D. Caldwell
Reg. No. 39,926
Tel.:(503) 439-8778

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026